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OFFICE OF PETITIONS

In re Application of :
Lisa Baker :
Application No. 10/036,840 : DECISION GRANTING PETITION
Filed: December 21, 2001 : UNDER 37 CFR 1.181
Attorney Docket No. PG16044P0780US :

This is a decision on the "Request to Reinstate Application," filed January 21, 2005, which is being treated as a petition under 37 CFR 1.181 requesting withdrawal of the holding of abandonment in the present application.

The petition is GRANTED.

This application was held abandoned for failure to timely reply to the non-final Office action of June 15, 2004, which set a three month shortened statutory period for reply. A Notice of Abandonment was mailed on January 4, 2005.

Petitioner states that a reply to the non-final Office action was in fact timely filed. To support this assertion, petitioner has submitted a copy of a return postcard which acknowledges receipt by the U.S. Patent and Trademark Office (USPTO) on October 18, 2004 of the following items: "Petition For Extension of Time (1 page) in duplicate, a check in the amount of \$110.00 for extension fee, Amendment (9 pages), this return postcard."

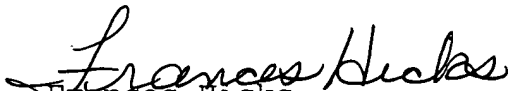
The correspondence acknowledged as having been received in the USPTO on October 18, 2004 is not of record in the application file and cannot be located. However, MPEP 503 states that "A post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, it is concluded that the reply to the non-final Office action of June 15, 2004 was timely received in the USPTO but lost after receipt thereof. This is further corroborated by Office finance records which indicates receipt of the \$110 extension of time fee on October 18, 2004.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

The copy of the reply received with the instant petition will be accepted in place of the reply acknowledged as having been received in the USPTO on October 18, 2004.

Inquiries concerning this decision may be directed to the undersigned at (571) 272-3218. All other inquiries concerning either the status of the application or examination procedures should be directed to the Technology Center.

This matter is being referred to Technology Center AU 3761 for appropriate action in the normal course of business on the reply received to the non-final Office action of June 15, 2004.


Frances Hicks
Petitions Examiner
Office of Petitions